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No. 83-1220

In the Supreme Court of the United States

OCTOBER TERM, 1983

WILLIAM J. FARRAH, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

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Petitioner challenges the court of appeals' holding that the district court properly exercised its discretion in rescinding an order permitting withdrawal of his guilty plea. The decision below is correct. Petitioner does not allege (nor is there) a conflict among the circuits on the question presented. There is no basis for review by this Court.

1. In August 1981, pursuant to an oral plea agreement, petitioner pled guilty to one count of a three-count indictment charging him with income tax offenses (Pet. App. 1a). When the district court sentenced him to a one-year prison term, it became apparent that there had been a misunderstanding concerning the maximum period of imprisonment that would be imposed (*id.* at 16a-18a). The court accordingly permitted petitioner to withdraw his plea (*id.* at 12a).

On October 20, 1981, the parties presented to the district court a new plea agreement. The new agreement was in writing and was signed by petitioner (Pet. App. 9a). It provided that the maximum term of imprisonment should not exceed one year, but that the government would "make no recommendation nor take any position regarding any sentence which the court may impose" (*ibid.*). The district court questioned petitioner as to the voluntariness and factual basis for his plea, specifically inquiring if anyone had "informed [him] what sentence the Court will actually impose * * *, other than that [the] sentence will not exceed one year in prison" (*id.* at 21a). Petitioner replied in the negative (*ibid.*). The district court then imposed a sentence of one year's incarceration (*id.* at 3a, 20a-21a). Immediately thereafter, petitioner asserted that " 'everybody' had promised him that he would be incarcerated for a period of only four months," and again sought permission to withdraw his plea (*id.* at 3a, 21a). Petitioner's counsel thereupon moved to withdraw from the case (*id.* at 22a).

At the close of the hearing, the district court orally granted petitioner's request to withdraw his plea, stating that a written order to that effect would be entered subsequently (Pet. App. 3a-4a, 22a-23a). The judge later began to suspect "that maybe [petitioner's] statement was not correct," and for that reason "did not finalize the order" (*id.* at 22a). Although no written order was ever entered, a docket entry was made eight days later indicating that petitioner's guilty plea had been withdrawn (*id.* at 4a, 23a).

On November 10, 1981, the government moved the district court to reconsider its order permitting petitioner to withdraw his plea (Pet. App. 4a). The court held an evidentiary hearing on the motion (*id.* at 21a). It found that petitioner had been "repeatedly advised," both by the government and by his lawyers, that "the plea agreement provided for a maximum one year custody and that the

actual sentencing decision was that of the Court" (*id.* at 24a). It found that petitioner "thoroughly understood the nature of his guilty plea * * * and the possible sentence that he was subjected to" under the agreement, and that his attempt to retract his plea stemmed from disappointment that "the sentence he received was more than he had hoped for" (*ibid.*). The court accordingly reversed its earlier ruling and reinstated petitioner's guilty plea (*id.* at 4a, 24a). It did not reimpose the original sentence, but sentenced petitioner to only six months' imprisonment (*id.* at 4a).

The court of appeals agreed with the district court that petitioner's claim of misunderstanding "represent[ed] nothing less than an attempt to breach a proper plea agreement" (Pet. App. 10a). Nonetheless, the panel initially reversed the district court's ruling because it "ha[d] not found any authority which would permit the district judge to reconsider [its] order and reinstate [the] guilty plea" (*id.* at 11a). On the government's petition for rehearing, the panel vacated its initial order and affirmed the judgment of conviction (*id.* at 6a). In so doing, it adopted the position of the Third Circuit in *United States* v. *Jerry*, 487 F.2d 600, 604 (1973), which held that a district court has plenary power "to correct mistakes made in its handling of a case so long as the court's jurisdiction continues." The court of appeals had "no hesitation" in holding that the district court had properly exercised that power here, concluding that the "record fully support[ed] the trial judge's conclusion that [petitioner] completely understood the possible length of incarceration in connection with his plea" and that there was "simply no basis for [his] post-sentence protestations to the contrary" (*id.* at 5a).

2. The court of appeals correctly held that a district court has the authority to rescind an order permitting withdrawal of a guilty plea. Accord, *United States* v. *Jerry*, 487 F.2d at 604. See *United States* v. *LoRusso*, 695 F.2d 45 (2d Cir.

1982), cert. denied *sub nom. Errante* v. *United States*, No. 82-1452 (Apr. 4, 1983) (upholding district court's authority to rescind order dismissing one count of indictment); *United States* v. *Green*, 414 F.2d 1174 (D.C. Cir. 1969) (upholding district court's authority to rescind oral ruling granting motion to dismiss indictment). This authority derives not from any express rule or statute, but from the inherent power of a district court, so long as it has jurisdiction over a civil or criminal case, to reconsider interlocutory orders when it is consonant with justice to do so. See *Jerry*, 487 F.2d at 604, 605; *LoRusso*, 695 F.2d at 53. Cf. *United States* v. *Dieter*, 429 U.S. 6, 8 n.3 (1976), quoting *United States* v. *Healy*, 376 U.S. 75, 79 (1964) (noting that motions for reconsideration are sanctioned by " 'traditional and virtually unquestioned practice,' " notwithstanding the absence of any rule or statute expressly authorizing them).

Although petitioner appears to concede that district courts, in general, have authority to rescind orders permitting withdrawal of guilty pleas, he contends that the district court abused its discretion in exercising that authority on the facts of this case. This contention is meritless. The court of appeals held that "[t]he record fully supports the trial judge's conclusion that [petitioner] completely understood the possible length of incarceration in connection with his plea" and that his assertions to the contrary "represent[ed] nothing less than an attempt to breach a proper plea agreement" (Pet. App. 5a, 10a). Since these findings left the district judge convinced that he had made a mistake in permitting petitioner to withdraw his plea, the court plainly did not abuse its discretion in correcting its error upon the government's motion for reconsideration.[1]

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[1] Petitioner attempts to distinguish this case from *Jerry* (Pet. 9-10) on the ground that the judge's mistake there involved his failure to afford the government a hearing, whereas the judge's mistake here involved his

There is no merit to petitioner's contention (Pet. 6-7, 9) that the district court lacked authority to reconsider its order because the government's motion for reconsideration was filed late under the local rules.[2] Compliance with the time limits of local court rules "is a matter for the court's discretion," and a district court's "failure to insist on compliance does not deprive it of jurisdiction." *United States* v. *Spiegel*, 604 F.2d 961, 971 (5th Cir. 1979), cert. denied, 446 U.S. 935 (1980). Nor is there any merit to petitioner's contention (Pet. 10-13) that his alleged discovery of new evidence, after he had entered his guilty plea, affected the propriety of the district court's action. The only question presented by the government's motion for reconsideration was whether petitioner understood the plea agreement at the time he entered his plea. The district court properly held that evidence allegedly discovered by petitioner thereafter did not "ha[ve] anything to do with" the question whether his plea was knowing and voluntary at that time.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

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evaluation of petitioner's veracity. This is a distinction without a difference. The precise nature of the error is irrelevant in determining whether the district court had authority to correct it.

[2]The government's motion was filed on November 10, 1981 (Pet. App. 14a), 13 days after the withdrawal of petitioner's plea was entered on the docket. It was thus three days late under Rule 17k of the Rules of the United States District Court for the Eastern District of Michigan.

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